

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ANTONIA C. RODRIGUEZ
Claimant

VS.

VIA CHRISTI REGIONAL MEDICAL CTR.
Self-Insured Respondent

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Docket No. **1,039,001**

ORDER

Claimant requests review of the November 18, 2008 preliminary hearing Order entered by Administrative Law Judge Thomas Klein.

ISSUES

The claimant suffered an accidental work-related injury to her back while working for respondent in November 1993. Treatment for that injury included an L4-5 discectomy on October 4, 1994. After recovering from surgery the claimant returned to work for respondent and she settled that workers compensation claim by an Agreed Award on March 18, 1996.¹

The claimant continued to work for respondent until her employment was terminated in January 2008. At the termination hearing the claimant alleged she had suffered a fall at work in October 2005 that aggravated her preexisting back impairment. She then filed the instant claim and further alleged that after the fall in October 2005 through her last day worked in January 2008, she suffered repetitive injuries that progressively worsened her back condition.

The Administrative Law Judge (ALJ) referred claimant for a court-ordered independent medical examination and a follow-up examination. After a preliminary hearing the ALJ denied claimant's request for benefits.

Claimant requests review of whether the ALJ erred in not granting her request for additional medical treatment.

Respondent argues the ALJ's Order should be affirmed.

¹ P.H. Trans., Resp. Ex. 2.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

Antonia Rodriguez began working as a housekeeper for respondent on December 15, 1975. She sustained a work-related back and hip injury in 1993 which resulted in a discectomy in 1994. She returned to work for respondent and was promoted to a coordinator position in 1998. In that job she continued to perform housekeeping work until her last two years working for respondent when she only performed inspections of work done by other housekeepers.

On October 11, 2005, claimant fell on some steps and reported the accident to her supervisor but she continued to work. Claimant did not complete an accident report and never requested medical treatment. But claimant testified that as she continued working her back and hip pain worsened.

Claimant's employment with respondent was terminated in January 2008. During the termination hearing the claimant mentioned the fall in October 2005. But claimant agreed that before the termination hearing she had not been receiving any medical treatment for the injuries she had suffered or had allegedly suffered while working for respondent.

A preliminary hearing was scheduled for April 22, 2008, but after discussions with counsel, the ALJ entered an Order referring claimant to Dr. Paul Stein for an independent medical examination. Dr. Stein was directed to provide an opinion whether claimant's low back complaints were the result of her work activities and to provide treatment recommendations.

Dr. Stein performed a physical examination of claimant and concluded that there was no compelling evidence to determine that a permanent injury occurred to the spine as a result of the fall on October 11, 2005, or the working days thereafter. The doctor noted:

In regard to causation, I find no compelling evidence in the history or records provided to determine that a permanent injury occurred to the spine on 10/11/05 or that permanent injury occurred to the spine on the working days thereafter. There is significant preexisting and symptomatic degenerative disease. The patient's body habitus is likely a significant contributing factor to strain on the lower back. Certainly, the work activity may have caused more discomfort in an individual with symptomatic degenerative disease but I do not find evidence of a permanent structural change that can be attributed to the fall or work activity within a reasonable degree of medical probability.²

² *Id.*, Resp. Ex. 1 at 5-6.

Dr. Stein's report also recommended an MRI of the cervical spine to determine if there was evidence of nerve root compression and cervical radiculopathy.

Upon receipt of Dr. Stein's report a status conference was held between the parties and the ALJ. The ALJ then issued an Order authorizing Dr. Stein to perform an MRI of claimant's cervical spine and to recommend a course of treatment, if necessary. Dr. Stein performed the test and concluded that the MRI film did not suggest nerve root irritation and did not explain claimant's right upper extremity symptomatology. The doctor did not recommend treatment.

At the request of claimant's attorney, Dr. Pedro A. Murati examined claimant on August 28, 2008, in order to make treatment recommendations. Dr. Murati diagnosed claimant as morbidly obese, with a cervical strain, right SI joint dysfunction, aggravation of preexisting low back condition and low back pain with symptoms of radiculopathy. Dr. Murati opined that, except for claimant's obesity, all her conditions were the result of a series of repetitive injuries through her last day worked.

The ALJ denied claimant's request for benefits. This Board Member agrees with that determination and affirms. Claimant neither sought nor requested medical treatment from respondent after the October 2005 fall. And claimant was aware of the procedure to obtain medical treatment for a work-related injury as demonstrated by her previous workers compensation claim against the respondent. She continued working and neither reported nor sought treatment for any alleged work-related physical complaints until she was in a meeting at which her employment with respondent was being terminated. The timing of her complaints is suspect. Finally, the court-ordered independent medical examiner concluded neither the fall nor claimant's subsequent work activities had caused her any permanent injury.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.³ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2007 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.⁴

WHEREFORE, it is the finding of this Board Member that the Order of Administrative Law Judge Thomas Klein dated November 18, 2008, is affirmed.

IT IS SO ORDERED.

³ K.S.A. 44-534a.

⁴ K.S.A. 2007 Supp. 44-555c(k).

Dated this _____ day of January 2009.

HONORABLE DAVID A. SHUFELT
BOARD MEMBER

c: Joseph Seiwert, Attorney for Claimant
Edward Heath, Attorney for Respondent
Thomas Klein, Administrative Law Judge